

NATIVE ACTION

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December 6, 2004

Kenneth Blodgett
Surface Transportation Board
Case Control Unit
Washington, DC 20423

ATTN: STB Docket No. FD 30186 (Sub-No. 3)

RE: Native Action's comments on Draft Supplemental Environmental Impact Statement (STB Finance Docket No. 30186 (Sub-No. 3) Tongue River III.

Dear Mr. Blodgett,

Native Action is submitting brief summary comments on the above-referenced docket as follows. We are requesting additional time to submit more extensive comments that will supplement our comments. Please inform me as to our request to submit supplemental comments.

Native Action is a non-profit community based organization located in Lame Deer, Montana on the Northern Cheyenne Indian Reservation. Founded in 1984 by enrolled members of the Northern Cheyenne Tribe, Native Action's mission statement is: "to bridge racial, socio-economic, and environmental barriers by empowering, challenging, and educating people in order to protect the environment and enhance the quality of life for future generations."

As the Executive Director of Native Action, I am an enrolled member of the Northern Cheyenne Tribe and I reside 2 miles south of Lame Deer. One of Native Action's board members, Dr. Alonzo Spang Sr. and his family reside along Clubfoot Creek, which is within the Birney Village district of the Northern Cheyenne Reservation. Native Action works closely with the tribal members who live in the Birney Village on our Reservation, which is located directly along the Tongue River between Ashland and Birney Day Town. We are all very concerned with the impacts of the Tongue River Railroad to our homeland and to our tribal way of life here on the Northern Cheyenne Indian Reservation.

Native Action is a small organization with limited funding, but we have attempted to keep abreast of the developments of the Tongue River Railroad. Native Action has



A non-profit organization located on the Northern Cheyenne Indian Reservation dedicated to native self-sufficiency.



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submitted comments on the Tongue River Railroad for many years now, dating back to our correspondence to the Interstate Commerce Commission.

As we have stated in past correspondence, we do not believe that there is a public need for the Tongue River Railroad. Furthermore, the railroad will have serious and irreparable impacts to the Tongue River Valley and to our tribal culture.

The lands within the area where the Tongue River Railroad will be are very important historical and cultural lands to our Tribe. Many of our tribal members have testified at numerous hearings over the years on coal strip mining proposals, that we have tribal members who are buried in this area along the Tongue River, and that our tribal members depend on this area to gather ceremonial plants, soils, and river animals and birds. Our people continue to do traditional cultural ceremonies in this area along the Tongue River. One can see some of these ceremonial sites by just driving along the Tongue River Road, where Sundance and sweat lodges are visible. This area along the Tongue River is integral to the perpetuation of our Tribe's cultural way of life.

The Tongue River Railroad will irreparably impact this cultural way of life that we live here on the Northern Cheyenne Indian Reservation. There are statutes and caselaw that are supposed to protect our Tribe's way of life and we ask that you apply them in your analysis. The American Indian Religious Freedom Act, the National Historic Preservation Act and numerous cases all have determined that tribal historic and cultural sites are worthy of protection and that proposed developments must be closely scrutinized to prevent impacts.

Our Reservation has Class 1 Air Quality pursuant the Federal Clean Air Act PSD regulations and the Tongue River Railroad, coupled with the methane gas developments, will negatively impact our air quality, with no mitigation proposed. Additionally, our Reservation also has established Tribal Water Quality Standards for the Tongue River and the Railroad will negatively impact our water quality in the River. Our Tribe also depends upon the water springs for not only water, but we also believe that water spirits reside therein. The EIS does not have data on impacts to our sacred springs that could be impacted by the Railroad's vibrations. Coupled with this is our concern with the methane companies' plans to drawdown our aquifers. We ask that you consider the impacts to the Tongue River from the influx of high sodium coal bed methane gas "wastewater". We are very concerned also with the proposed Western Alignment requiring moving 17.3 million cubic yards of fill material and its impacts to sediment loads in the River. What is your cumulative analysis of these impacts and your proposed mitigation? Why have you not used the findings of the on-going TMDL process, for Total Maximum Daily Load in the Tongue River?

Our homeland is very important to us and to future generations of Cheyenne people. As you can see, our Tribe has passed laws to protect our environment and we expect that these tribal laws be upheld. How do you propose to get around these tribal environmental laws in permitting the Tongue River Railroad directly along our River?

We have quantified water rights in the Tongue River and in the Tongue River Dam waters that are federally guaranteed both as to quantity and quality. These are property rights that belong to our Tribe and tribal membership. The Railroad will negatively impact these rights.

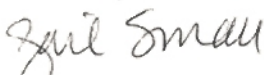
We are a subsistence-dependent Tribe and this was recently documented in the 2002 Northern Cheyenne Tribe and Its Reservation Report submitted to the BLM and the State of Montana for the Statewide Oil and Gas EIS and Amendment of the Powder River and Billings Resource Management Plans. The subsistence surveys that were documented in this report shows that many of our tribal families are dependent upon the wild game in this rich area of the Tongue River Valley and that this river valley is critical habitat and integral to the migratory routes for the wildlife that our people depend on for their subsistence. The EIS is totally lacking with data on wildlife populations and habitat in the Tongue River Valley. Your 20 year old biological inventories are out of date and only cover a small percentage of the proposed railroad route—leaving huge areas unstudied. We ask that you correct these inadequacies because the Cheyenne people depend upon this wild game to eat, including the fish and birds dependent on the Tongue River that we have subsisted on for generations. The Railroad will have irreparable impacts to our subsistence way of life and cumulative impact analysis and up-dated data analysis and mitigation is called for.

The Northern Cheyenne people also have tremendous cultural respect for the bald eagle, which is a threatened species under the Endangered Species Act. The Tongue River Valley is critical habitat for the bald eagles that our Tribe depends upon in our cultural ceremonies. We ask that you do a cumulative analysis as to the impact on the bald eagle from not only the Tongue River Railroad, but also include impacts from the methane gas developments in the area and the proposed Otter Creek Coal development near Ashland, Montana.

As a federal agency, you are our federal trustee who is charged with protecting our interests. How are you carrying out your fiduciary obligations to us while permitting this railroad that will irreparably impact our homeland and people?

Native Action would like to incorporate the Northern Plains Resource Council's comments into our comments as well because they cover much of the environmental basis for our environmental concerns.

Sincerely,



Ms. Gail Small
Exec. Director
Native Action